

BEFORE THE  
BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

**SEAN A. GUTIERREZ**

465 Belle Vista Dr. #177  
Chula Vista, CA 91910

Pharmacy Technician Reg. No. TCH 36449

Respondent.

Case No. 3062

OAH No. L-2008030530

**DECISION AND ORDER**

The attached Stipulated Surrender of License and Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter..

This Decision shall become effective on August 27, 2008.

It is so ORDERED July 28, 2008.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

By



KENNETH H. SCHELL  
Board President

1 EDMUND G. BROWN JR., Attorney General  
of the State of California  
2 JAMES M. LEDAKIS  
Supervising Deputy Attorney General  
3 T. MICHELLE LAIRD, State Bar No. 162979  
Deputy Attorney General  
4 110 West "A" Street, Suite 1100  
San Diego, CA 92101

5  
6 P.O. Box 85266  
San Diego, CA 92186-5266  
Telephone: (619) 645-2323  
7 Facsimile: (619) 645-2061

8 Attorneys for Complainant  
9

10 **BEFORE THE**  
11 **BOARD OF PHARMACY**  
12 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

Case No. 3062

14 **SEAN A. GUTIERREZ**

OAH No. L-2008030530

15 465 Belle Vista Dr. #177  
16 Chula Vista, CA 91910

**STIPULATED SURRENDER OF  
LICENSE AND ORDER**

17 Pharmacy Technician Reg. No. TCH 36449

18 Respondent.

19 IT IS HEREBY STIPULATED AND AGREED by and between the parties in this  
20 proceeding that the following matters are true:

21 **PARTIES**

22 1. Virginia Herold (Complainant) is the Executive Officer of the Board of  
23 Pharmacy. She brought this action solely in her official capacity and is represented in this matter  
24 by Edmund G. Brown Jr., Attorney General of the State of California, by T. Michelle Laird,  
25 Deputy Attorney General.

26 2. Sean A. Gutierrez (Respondent) is representing himself in this proceeding  
27 and has chosen not to exercise his right to be represented by counsel.

28 ///

3. On or about February 14, 2001, the Board of Pharmacy issued Pharmacy Technician Registration No. TCH 36449 to Sean A. Gutierrez. The Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 3062 and will expire on July 31, 2008, unless renewed.

## JURISDICTION

4. Accusation No. 3062 was filed before the Board of Pharmacy (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on December 5, 2007. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 3062 is attached hereto as exhibit A and is incorporated by reference.

## ADVISEMENT AND WAIVERS

5. Respondent has carefully read and understands the charges and allegations in Accusation No. 3062. Respondent also has carefully read and understands the effects of this Stipulated Surrender of License and Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

## CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Accusation No. 3062, agrees that cause exists for discipline and hereby surrenders his Pharmacy Technician Registration No. TCH 36449 for the Board's formal acceptance.

///

9. Respondent understands that by signing this stipulation he enables the Board to issue an order accepting the surrender of his Pharmacy Technician Registration without further process.

## CONTINGENCY

10. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may communicate directly with the Board regarding this stipulation and surrender, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

11. The parties understand and agree that facsimile copies of this Stipulated Surrender of License and Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

12. In consideration of the foregoing admissions and stipulations, the parties agree that the Board of Pharmacy may, without further notice or formal proceeding, issue and enter the following Order:

## ORDER

IT IS HEREBY ORDERED that Pharmacy Technician Registration No. TCH 36449, issued to Respondent Sean A. Gutierrez, is surrendered and accepted by the Board of Pharmacy.

13. The surrender of Respondent's Pharmacy Technician Registration and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board.

///

1                   14.     Respondent shall lose all rights and privileges as a Pharmacy Technician  
2 in California as of the effective date of the Board's Decision and Order.

3                   15.     Respondent shall cause to be delivered to the Board his pocket technician  
4 registration within 10 days of the effective date of the Decision and Order.

5                   16.     Respondent may not reapply for a technician registration from the Board  
6 for three years from the effective date of the Decision and Order. Respondent fully understands  
7 and agrees that if he ever files an application for licensure or a petition for reinstatement in the  
8 State of California, the Board shall treat it as a new application for licensure. Respondent must  
9 comply with all the laws, regulations and procedures for licensure in effect at the time the  
10 application or petition is filed, and all of the charges and allegations contained in Accusation No.  
11 3062 shall be deemed to be true, correct and admitted by Respondent when the Board determines  
12 whether to grant or deny the application or petition. Respondent shall meet all requirements  
13 applicable to that technician registration as of the date the application or petition for  
14 reinstatement is submitted to the Board, including, but not limited to, certification by a nationally  
15 recognized body prior to the issuance of a new registration.

16                   17.     Respondent shall pay the Board its costs of investigation and enforcement  
17 in the amount of \$4,620.00 prior to the issuance of any new or reinstated license.

18                                   ACCEPTANCE

19                   I have carefully read the Stipulated Surrender of License and Order. I understand  
20 the stipulation and the effect it will have on my Pharmacy Technician Registration. I enter into  
21 this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and  
22 agree to be bound by the Decision and Order of the Board of Pharmacy.

23 DATED: 5/14/08

24  
25                                   Sean A Gutierrez  
26                                   SEAN A. GUTIERREZ  
                                  Respondent

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DATED: May 14, '08

JAMES M. LEDAKIS  
Supervising Deputy Attorney General

Attorneys for Complainant

5

**Exhibit A**  
**Accusation No. 3062**

1 EDMUND G. BROWN JR., Attorney General  
of the State of California  
2 LINDA K. SCHNEIDER,  
Supervising Deputy Attorney General  
3 T. MICHELLE LAIRD, State Bar No. 162979  
Deputy Attorney General  
4 California Department of Justice  
110 West "A" Street, Suite 1100  
5 San Diego, CA 92101

6 P.O. Box 85266  
San Diego, CA 92186-5266  
7 Telephone: (619) 645-2323  
Facsimile: (619) 645-2061

8 Attorneys for Complainant  
9

10 **BEFORE THE**  
11 **BOARD OF PHARMACY**  
12 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

Case No. 3062

14 **SEAN A. GUTIERREZ**  
5617 Galloping Way  
15 Bonita, CA 91902

**A C C U S A T I O N**

16 Pharmacy Technician Reg. No. TCH 36449

17 Respondent.  
18

19 Complainant alleges:

20 **PARTIES**

21 1. Virginia Herold (Complainant) brings this Accusation solely in her official  
22 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

23 2. On or about February 14, 2001, the Board of Pharmacy issued Pharmacy  
24 Technician Registration No. TCH 36449 to Sean A. Gutierrez (Respondent). The Pharmacy  
25 Technician Registration was in full force and effect at all times relevant to the charges brought  
26 herein and will expire on July 31, 2008, unless renewed.

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4. Section 4300(a) of the Code provides that every license issued by the Board may be suspended or revoked.

## STATUTORY PROVISIONS

"The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:

"(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

"(h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license.

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1           "(j) The violation of any of the statutes of this state, or any other state, or of the  
2 United States regulating controlled substances and dangerous drugs.

3           ". . . .

4           "(l) The conviction of a crime substantially related to the qualifications, functions,  
5 and duties of a licensee under this chapter. . . . [T]he record of conviction shall be conclusive  
6 evidence only of the fact that the conviction occurred. The board may inquire into the  
7 circumstances surrounding the commission of the crime, in order to fix the degree of discipline  
8 or, in the case of a conviction not involving controlled substances or dangerous drugs, to  
9 determine if the conviction is of an offense substantially related to the qualifications, functions,  
10 and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a  
11 plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The  
12 board may take action when the time for appeal has elapsed, or the judgment of conviction has  
13 been affirmed on appeal or when an order granting probation is made suspending the imposition  
14 of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing  
15 the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside  
16 the verdict of guilty, or dismissing the accusation, information, or indictment."

17           7.       Section 4022 of the Code states:

18           "Dangerous drug" or "dangerous device" means any drug or device unsafe for  
19 self-use in humans or animals, and includes the following:

20           "(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing  
21 without prescription," "Rx only," or words of similar import.

22           ". . . .

23           "(c) Any other drug or device that by federal or state law can be lawfully  
24 dispensed only on prescription or furnished pursuant to Section 4006."

25           8.       Section 4059 of the Code states, in pertinent part, that a person may not  
26 furnish any dangerous drug except upon the prescription of a physician, dentist, podiatrist,  
27 optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7.

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1                   9.       Section 4060 of the Code states:

2                   “No person shall possess any controlled substance, except that furnished to a  
3 person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or  
4 naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a  
5 certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section  
6 2836.1, or a physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to  
7 Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause  
8 (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052.”

9                   10.      Section 4327 of the Code states that any person who, while on duty, sells,  
10 dispenses or compounds any drug while under the influence of any dangerous drug or alcoholic  
11 beverages shall be guilty of a misdemeanor.

12                  11.      Health and Safety Code section 11170 states that no person shall prescribe,  
13 administer, or furnish a controlled substance for himself.

14                  12.      Health and Safety Code section 111300 states that it is unlawful for any  
15 person to adulterate any drug or device.

16                  13.      Health and Safety Code section 11173(a) states that it is unlawful for any  
17 person to obtain controlled substances, or to procure or attempt to procure the administration of  
18 or prescription for controlled substances by fraud, deceit, misrepresentation or subterfuge.

19                  14.      Health and Safety Code section 11350(a) states, “[e]xcept as otherwise  
20 provided in this division, every person who possesses . . . any controlled substance classified in  
21 Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a  
22 physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished  
23 by imprisonment in the state prison.”

24                  15.      Health and Safety Code section 11377 provides in relevant part:

25                  “(a) Except as authorized by law and as otherwise provided in subdivision (b) or  
26 Section 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the  
27 Business and Professions Code, every person who possesses any controlled substance which is  
28 (1) classified in Schedule III, IV, or V, and which is not a narcotic drug, (2) specified in

1 subdivision (d) of Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d),  
2 (3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2)  
3 or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f) of Section  
4 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to  
5 practice in this state, shall be punished by imprisonment in a county jail for a period of not more  
6 than one year or in the state prison.”

7 16. Penal Code section 484 states, in pertinent part, that every person who  
8 shall unlawfully steal, take or fraudulently appropriate the property or labor of another commits  
9 the crime of theft.

10 17. Penal Code section 488 states that cases of theft not elsewhere defined by  
11 law are charged as petty theft.

12 18. California Code of Regulations, title 16 (CCR), section 1770, states:

13 For the purpose of denial, suspension, or revocation of a personal or  
14 facility license pursuant to Division 1.5 (commencing with Section 475) of the  
15 Business and Professions Code, a crime or act shall be considered substantially  
16 related to the qualifications, functions or duties of a licensee or registrant if to a  
substantial degree it evidences present or potential unfitness of a licensee or  
registrant to perform the functions authorized by his license or registration in a  
manner consistent with the public health, safety, or welfare.

17 19. CCR section 1769, states, in pertinent part:

18 . . . .

19 (b) When considering the suspension or revocation of a facility or a  
20 personal license on the ground that the licensee or the registrant has been  
21 convicted of a crime, the board, in evaluating the rehabilitation of such person and  
his present eligibility for a license will consider the following criteria:

22 (1) Nature and severity of the act(s) or offense(s).

23 (2) Total criminal record.

24 (3) The time that has elapsed since commission of the act(s) or offense(s).

25 (4) Whether the licensee has complied with all terms of parole, probation,  
restitution or any other sanctions lawfully imposed against the licensee.

26 (5) Evidence, if any, of rehabilitation submitted by the licensee.

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1                   20.     **Drugs:**

2                   a.       “Phenergan with Codeine,” also known as “Promethazine with  
3 Codeine,” is a schedule V controlled substance under Health and Safety Code section  
4 11058(c)(1), and a dangerous drug under Business and Professions Code section 4022.

5                   b.       “Phenergan VC with Codeine,” also known as “Promethazine VC  
6 with Codeine,” is a schedule V controlled substance under Health and Safety Code section  
7 11058(c)(1), and a dangerous drug under Business and Professions Code section 4022.

8                   c.       “Lortab 10/500,” also known as “Hydrocodone 10mg with  
9 Acetaminophen 500mg,” is a schedule III controlled substance under Health and Safety Code  
10 section 11056(e)(4), and a dangerous drug under Business and Professions Code section 4022.

11                  d.       “Lortab 7.5/500,” also known as “Hydrocodone 7.5mg with  
12 Acetaminophen 500mg,” is a schedule III controlled substance under Health and Safety Code  
13 section 11056(e)(4), and a dangerous drug under Business and Professions Code section 4022.

14                  e.       “Tussionex,” also known as “Hydrocodone 10 mg with  
15 Chlorpheniramine 8mg,” is a schedule III controlled substance under Health and Safety Code  
16 section 11056(e)(4), and a dangerous drug under Business and Professions Code section 4022.

17                  f.       “Vicodin,” also known as “Hydrocodone 5mg with Acetaminophen  
18 500mg,” is a schedule III controlled substance under Health and Safety Code section  
19 11056(e)(4), and a dangerous drug under Business and Professions Code section 4022.

20                  g.       “Vicodin HP,” also known as “Hydrocodone 10mg with  
21 Acetaminophen 660mg,” is a schedule III controlled substance under Health and Safety Code  
22 section 11056(e)(4), and a dangerous drug under Business and Professions Code section 4022.

23                  h.       “Norco,” also known as “Hydrocodone 10mg with Acetaminophen  
24 325mg,” is a schedule III controlled substance under Health and Safety Code section  
25 11056(e)(4), and a dangerous drug under Business and Professions Code section 4022.

26                  i.       “Hycotuss,” also known as “Hydrocodone 5mg with Guaifenesin  
27 100mg,” is a schedule III controlled substance under Health and Safety Code section  
28 11056(e)(4), and a dangerous drug under Business and Professions Code section 4022.

j. "Lorcet Plus," also known as "Hydrocodone 7.5mg with Acetaminophen 650mg," is a schedule III controlled substance under Health and Safety Code section 11056(e)(4), and a dangerous drug under Business and Professions Code section 4022.

k. "Klonopin," as known as "Clonazepam," is a schedule IV controlled substance under Health and Safety Code section 11057(d)(7), and a dangerous drug under Business and Professions Code section 4022.

l. "Xanax," as known as "Alprazolam," is a schedule IV controlled substance under Health and Safety Code section 11057(d)(1), and a dangerous drug under Business and Professions Code section 4022.

m. "Valium," as known as "Diazepam," is a schedule IV controlled substance under Health and Safety Code section 11057(d)(9), and a dangerous drug under Business and Professions Code section 4022.

n. "Protonix," also known as "Pantoprazole," is a dangerous drug under Business and Professions Code section 4022.

o. "Soma 500mg," also known as "Carisprodol," is a dangerous drug under Business and Professions Code section 4022.

p. "Robaxin 500mg," also known as "Methocarbamol," is a dangerous drug under Business and Professions Code section 4022.

q. "Lotensin," also known as "Benazepril," is a dangerous drug under Business and Professions Code section 4022.

#### COST RECOVERY

21. Section 125.3 of the Code states, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

#### FACTS

22. Respondent was employed as a pharmacy technician at Long's Drug Store #304 (Long's), located in San Diego, California, from on or about June 25, 2004 through on or

1 about September 20, 2005. His job duties included processing prescriptions and serving  
2 pharmacy customers.

3 23. On or about September 13, 2005, a covert camera in Long's pharmacy  
4 videotaped Respondent opening a bottle of Promethazine with Codeine Syrup, holding it to his  
5 mouth and drinking from it three times during his work shift.

6 24. On or about September 14, 2005, a covert camera in Long's pharmacy  
7 videotaped Respondent drinking from bottles of Promethazine with Codeine Syrup twice during  
8 his work shift.

9 25. On or about September 15, 2005, during an interview with Long's  
10 investigators, Respondent admitted taking prescription medications from Long's pharmacy for  
11 his personal use over approximately the previous six months. Respondent admitted to taking  
12 Lortab, Robaxin, Klonopin, Promethazine with Codeine, Soma, Tussionex, Lotensin, and  
13 Protonix. He admitted to consuming the stolen drugs at work and also to removing them from  
14 the store. Respondent estimated that he drank up to one-third of a 480ml bottle of Promethazine  
15 with Codeine each time he worked. He also admitted that on several occasions he took cash  
16 money, totaling approximately \$40.00, from Long's cash register. During the interview with the  
17 investigators, Respondent returned ten tablets of Hydrocodone/Apap 10/500mg that he removed  
18 from the pharmacy the previous day and which were then in his pocket.

19 26. Long's determined that Respondent's acknowledgments of drug and cash  
20 thefts totaled approximately \$4,892.23. Based on Respondent's admission of the amount of  
21 Promethazine with Codeine he consumed each time he worked, Respondent was consuming,  
22 while on duty as a pharmacy technician, 5-8 times the normal daily amount of Promethazine  
23 based on a typical prescription of 1 to 2 teaspoons every 4-6 hours. Respondent was terminated  
24 from his employment at Long's on or about September 20, 2005.

25 27. On or about the week of September 21, 2005, Long's conducted a  
26 complete controlled substance inventory for the period from approximately December 1, 2004  
27 through approximately September 28, 2005. Shortages of the following controlled substances  
28 and amounts were noted:

1 Lortab 10/500mg - shortage of approximately 101 tablets;  
2 Lortab 7.5/500mg - shortage of approximately 36 tablets;  
3 Tussionex - shortage of approximately 5,560 cc's;  
4 Promethazine with Codeine - shortage of approximately 51,424 cc's;  
5 Promethazine VC with Codeine - shortage of approximately 7,580 cc's;  
6 Hydrocodone/Apap 5/500mg - shortage of approximately 45 tablets;  
7 Hydrocodone/Apap 10/325mg - shortage of approximately 400 tablets;  
8 Hydrocodone/Apap 10/500mg - shortage of approximately 2,373 tablets;  
9 Hydrocodone/Apap 10/660mg - shortage of approximately 148 tablets;  
10 Hydrocodone with Guaifenesin - shortage of approximately 500 cc's;  
11 Lorcet Plus - shortage of approximately 22 tablets;  
12 Clonazepam - shortage of approximately 516 tablets;  
13 Alprazolam 1mg - shortage of approximately 494 tablets;  
14 Alprazolam .5 mg - shortage of approximately 132 tablets; and,  
15 Diazepam 10mg - shortage of approximately 440 tablets.

16 28. In a wholly separate incident, on or about February 21, 2006, Respondent  
17 was cited for petty theft pursuant to Penal Code section 488, for unlawfully taking property from  
18 a Von's grocery store. In Case No. S202209, entitled *People v. Sean Albert Gutierrez*, filed in  
19 San Diego Superior Court, South County Division on May 16, 2006, Respondent was charged  
20 with violating Penal Code section 484 (theft) based on the incident at Von's. On or about May  
21 26, 2006, Respondent pled guilty to violating Penal Code section 484, a misdemeanor.

#### 22 **FIRST CAUSE FOR DISCIPLINE**

##### 23 **(Unprofessional Conduct - Theft of Drugs)**

24 29. Paragraphs 1 through 28 are incorporated herein as though fully set forth.  
25 Respondent is subject to discipline for unprofessional conduct pursuant to Business and  
26 Professions Code section 4301(f) in that he committed acts involving moral turpitude,  
27 dishonesty, fraud, deceit or corruption. Specifically, Respondent stole controlled substances  
28 and/or dangerous drugs from Long's pharmacy while employed there as a pharmacy technician.



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1 substances and dangerous drugs. Specifically, Respondent, while on duty as a pharmacy  
2 technician, sold, dispensed or compounded drugs while under the influence of a dangerous drug  
3 in violation of Business and Professions Code section 4327.

4 **FIFTH CAUSE FOR DISCIPLINE**

5 **(Unprofessional Conduct - Theft of Cash)**

6 33. Paragraphs 1 through 28 re incorporated herein as though fully set forth.  
7 Respondent is subject to discipline for unprofessional conduct pursuant to Business and  
8 Professions Code section 4301(f) in that he committed acts involving moral turpitude,  
9 dishonesty, fraud, deceit or corruption. Specifically, Respondent stole cash money from Long's  
10 on several occasions while employed there as a pharmacy technician.

11 **SIXTH CAUSE FOR DISCIPLINE**

12 **(Unprofessional Conduct - Conviction of Crime)**

13 34. Paragraphs 1 through 28 re incorporated herein as though fully set forth.  
14 Respondent is subject to discipline for unprofessional conduct pursuant to Business and  
15 Professions Code section 4301(l) in that he was convicted of a crime substantially related to the  
16 qualifications, functions, and duties of a licensee. Specifically, Respondent pled guilty to  
17 violating Penal Code section 484 (theft) for unlawfully taking property from a Von's grocery  
18 store.

19 **SEVENTH CAUSE FOR DISCIPLINE**

20 **(Unprofessional Conduct - Theft of Property of Another)**

21 35. Paragraphs 1 through 28 re incorporated herein as though fully set forth.  
22 Respondent is subject to discipline for unprofessional conduct pursuant to Business and  
23 Professions Code section 4301(f) in that he committed acts involving moral turpitude,  
24 dishonesty, fraud, deceit or corruption. Specifically, Respondent unlawfully took property from a  
25 Von's grocery store and subsequently pled guilty to violating Penal Code section 484 (theft).

26 **PRAYER**

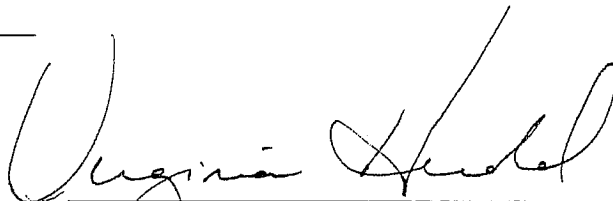
27 WHEREFORE, Complainant requests that a hearing be held on the matters herein  
28 alleged, and that following the hearing, the Board of Pharmacy issue a decision:

1                   1.     Revoking or suspending Pharmacy Technician Number TCH 36449,  
2 issued to Sean A. Gutierrez;

3                   2.     Ordering Sean A. Gutierrez to pay the Board of Pharmacy the reasonable  
4 costs of the investigation and enforcement of this case, pursuant to Business and Professions  
5 Code section 125.3; and,

6                   3.     Taking such other and further action as deemed necessary and proper.

7  
8 DATED: 11/7/07



VIRGINIA HEROLD  
Executive Officer  
Board of Pharmacy  
Department of Consumer Affairs  
State of California  
Complainant

14 SD2007800308

15 80140390.2.wpd